
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

KEITH RUSSELL JUDD,

Petitioner,

versus

JOHN B. FOX,

Respondent.

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CIVIL ACTION NO. 1:08-CV-48

**MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Keith Russell Judd, a federal prisoner confined in Beaumont, Texas, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition for lack of jurisdiction.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Petitioner's claims concerning a fine and restitution do not satisfy the "in custody" requirement of Section 2241. The petition will not be construed as a civil

rights action because petitioner did not pay the \$350 filing fee. *See Judd v. United States District Court*, 180 F.3d 262, 1999 WL 274610, at *1 (5th Cir. April 16, 1999) (finding that petitioner is barred under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* unless he is under imminent danger of serious physical injury).

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 9th day of March, 2008.

A handwritten signature in cursive script, reading "Marcia A. Crone".

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE